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July 18, 2000

**VIA HAND DELIVERY**

Magalie Roman Salas, Esquire  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

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JUL 18 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Oral Ex Parte Presentation  
CC Docket No. 96-45  
AAD/USB File No. 98-37

Dear Ms. Salas:

On Monday, July 17, 2000, the undersigned, Kenneth D. Salomon and Leonard J. Kennedy of this office, counsel for the Iowa Telecommunications and Technology Commission (the "ITTC"), met with Sharon Webber, Deputy Chief of the Accounting Policy Division of the Common Carrier Bureau and William Scher of the Common Carrier Bureau regarding the above-referenced matter and the undersigned, Mr. Salomon, Mr. Kennedy and Michael D. Hays of this office met with Dorothy Attwood of Chairman Kennard's office regarding this matter. During the meetings, the participants discussed the issues described on the attached handout, which was provided to each of the Commission participants.

Pursuant to Section 1.1206(b) of the Commission's Rules, an original and one copy of this letter are being submitted to the Secretary's office and copies are being provided to Ms. Attwood, Ms. Webber and Mr. Scher. Please inform me if any questions should arise in connection with this filing.

Respectfully submitted,



J.G. Harrington

JGH/lsr

cc (w/o attach.): Dorothy Attwood, Esq.  
Sharon Webber, Esq.  
William Scher, Esq.

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## **REGULATORY STATUS OF THE IOWA COMMUNICATIONS NETWORK**

### **Background on the Iowa Communications Network and This Proceeding**

- ICN was authorized in 1989 by the Iowa legislature, to provide telecommunications services to rural Iowa. Private participation was sought initially. The state built the initial elements of the network only because LECs did not respond to an RFP. The first two phases of the network are state owned; the third phase is leased.
- ICN provides a wide range of services, including long distance, distance learning, telemedicine and Internet access.
- Eligibility to use ICN's services is established by statute. Distance learning services are available to all entities, public and private, that provide instructional services. Telemedicine services effectively are available to any facility used by a doctor.
- ICN's services are offered under standard terms and conditions that do not vary from customer to customer. Customers are free to choose whether or not to use ICN's services.
- ICN sought a determination from the FCC that it is a common carrier, so that schools and libraries can receive universal service funding for services they purchase from ICN. ICN has not sought and will not seek reimbursement for the capital costs of constructing the network.

### **The Court of Appeals Decision**

- The Court held that the FCC had not considered whether, under *NARUC I* and *Midwest Video*, ICN is a common carrier because it offers service to all entities that are eligible to purchase those services under Iowa law.
- *NARUC I* and *Midwest Video* hold that government-imposed restrictions on who a provider can serve do not prevent that provider from being a common carrier under the Communications Act.
- The Court did not decide whether the FCC had properly determined that ICN would not be a carrier under the other prongs of the *NARUC* test.

### **Considerations Affecting FCC Action in Response to the Court of Appeals Decision**

- The decision contemplates that service providers subject to state-imposed requirements will be carriers if they hold out to all the entities they are permitted to serve by law. That is precisely what ICN does.
- The FCC can reach this result without adopting any specific determination regarding the normal boundary between private carriage and common carriage under the Communications Act.

- There are few, if any, risks to the FCC from treating ICN as a common carrier. It is unlikely that any other state will replicate Iowa's 1989 decision to establish the existing Iowa network now that the schools and libraries program has made it attractive for commercial carriers to serve that market segment and given growing facilities-based competition.
- A decision that holds that an entity can avoid common carrier status by limiting its clientele, *e.g.*, to large businesses, could have significant unintended consequences in other contexts. For instance, such a decision could affect the FCC's power to address consumer complaints under Title II and the ability of CLECs or other service providers with limited customer bases to obtain interconnection under Section 251.

### **Steps for Going Forward**

- There are significant concerns regarding the loss of universal service funding to Iowa schools and libraries. They are losing funding at a rate of \$1.8 million a year, and have lost more than \$5 million over the last three years.
- There may be an opportunity for settlement of this matter on terms that are beneficial to the FCC and to ICN.
- In the absence of a settlement, ICN supports a short comment cycle on the issues presented by the Court of Appeals decision, followed by a prompt order.